

REMARKS

Favorable reconsideration of this application, in light of the following remarks, is respectfully requested.

Claims 1-6 are pending in this application. By this Amendment, claim 1 is amended to provide proper antecedent basis. No new matter is added. Claim 1 is the sole independent claim.

Entry of After Final Amendment

Entry of this amendment is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issues requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) place the application in better form for appeal, should an appeal be necessary. Entry of the Amendment is thus respectfully requested.

Objection to the Specification

The Specification is objected to as failing to include a "Brief Description of Drawings" section. By this Amendment, Applicants have amended the Specification to include a "Brief Description of Drawings" section. Withdrawal of the objection is respectfully requested.

Claim Rejections - 35 U.S.C. § 103

Claims 1-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,597,891 ("Tantawy") in view of U.S. Patent Application Publication No. 2003/0067554 ("Klarfeld"). Applicants respectfully traverse this rejection for the reasons discussed below.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the U.S. Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*¹ noted that the rejection must establish a reasoning that it would have been obvious for one of ordinary skill in the art to have combined the teachings of the cited document(s). One way to establish this would be to show "*some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness*" and "*identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.*"² In addition, the cited document(s), when combined or modified, must teach or suggest all of the claim limitations of the rejected claims.³

Applicants respectfully submit that the proposed combination of references does not meet these criteria. In particular, the rejection fails to demonstrate that one of ordinary skill in the art would have combined the teachings of the Tantawy and the Klarfeld references in the manner used to reject the claims, and the applied references fail to teach and suggest all of the claim elements.

¹ 550 U.S. at 398, 82 USPQ2d at 1396 (2007).

² *Id.*

³ *In re Vaeck*, 947, F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

For example, in the outstanding Office Action, the rejection is based on an assertion that:

it would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add the feature of Klarfeld to the system of Tantawy as an essential means to increase the quality of the broadcast validation by providing a number of contents available for viewers in accordance with the viewer profiles.⁴

Applicants respectfully submit, however, that if the proposed modification or combination of the prior art would change the *principle of operation* of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.⁵ Applicants respectfully submit that the proposed combination of the Tantawy and the Klarfeld references would require a substantial reconstruction and redesign as well as a change in the basic principle under which the Klarfeld reference construction was designed to operate. For example, the Tantawy reference discloses receiving content data through a multicast broadcast transmission at a selected frequency by emulating the reception of content data over a unicast connection, wherein the content data has been previously encrypted with a first encrypting key, and a first decrypting key for decrypting the content data is encrypted with a second encrypting key. (see col. 11, lines 2-8). In other words, the Tantawy reference requires “first and second encrypting keys” to process the content data. Therefore, it may be difficult to modify or redesign the system of the Klarfeld reference so as to execute the content data by a diffuser before broadcasting. Accordingly, because the proposed combination of the Tantawy and Klarfeld references would require substantial reconstruction and redesign as well as

⁴ See Final Office Action mailed February 6, 2009, page 4, 3rd full paragraph.

⁵ *In re Ratti*, 270 F.2d 810, 23 USPQ 349 (CCPA 1959).

change the basic principle of operation, no *prima facie* case of obviousness has been established.

In addition, the mere disclosure of “*preparing the broadcast of the digital content by establishing structural configurations of the broadcast by introducing characteristics of different equipments intended for broadcasting*” is insufficient to establish a motivation to combine the teachings of the Tantawy and the Klarfeld references. In particular, Applicants respectfully submit that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination.”⁶ There is no disclosure or suggestion in the prior art to render the claims obvious. Therefore, the rejection failed to articulate a proper rationale to support an obviousness rejection.

Further, even if, *arguendo*, the teachings of the Tantawy and the Klarfeld references were to be combined, they would nonetheless fail to teach each and every element of the rejected claims. In particular, Applicants respectfully submit that the Tantawy and the Klarfeld references, whether alone or in combination, fail to teach or suggest, a method for validating broadcasting conditions of digital content, **by using a diffuser**..., including, *inter alia*:

preparing a broadcast of the at least one digital content by establishing:
the structural configurations of the broadcast by **introducing characteristics of different equipments intended for broadcasting in order to set the first set of data**, and
the operational conditions of the broadcast by introducing at least the time and date of the broadcast in order to set the second set of data,

⁶ *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

The Tantawy reference merely describes a solution in which a terminal receives the set of data (configurations, schedules, etc.) generated by the diffusion center, instead of a stand alone process executed by a diffuser before broadcasting a content without any interaction with a terminal. Besides, Tantawy describes that the terminal stores the database containing the data, rather than a diffuser storing the database containing the data. Therefore, claim 1 describes a process of pre-broadcast by a diffuser, and not the interaction with a terminal to determine the rights or possibility to transmit a digital content. Therefore, because the proposed combination of the Tantawy and the Klarfeld references, whether alone or in combination, fails to teach or suggest *all* of the elements of claim 1, no *prima facie* case of obviousness has been established.

In view of the above, Applicants respectfully submit that one of ordinary skill in the art would not have combined the teachings of the Tantawy and the Klarfeld references in the manner used to reject the claims, and that the proposed combination of the Tantawy and the Klarfeld references fails to teach or suggest all of the elements of amended claim 1. Thus, no *prima facie* case of obviousness has been established. Accordingly, claim 1 is allowable over the Tantawy and the Klarfeld references. Dependent claims 2-6 depend from claim 1 and are allowable for at least the reasons that claim 1 is allowable. Therefore, Applicants respectfully request that the rejection of claims 1-6 under 35 U.S.C. § 103(a) be favorable reconsidered and withdrawn.

CONCLUSION

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicants hereby petition for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$ 130 extension fee herewith.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

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